IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1493 OF 1993

Smt.Sukanyaben G. Vakil ....
Petitioner
V/s
Rasiklal T. Dalal & Ors..... .....
Respondent.

Mr.V.M.Parkar for B.R.Zaveri, Adv. for the petitioner.

Mr.J.M.Chodankar, Adv. For respondent No.1.

Mr.A.P.Vanarse, AGP for respondent No.3.

CORAM: A.P. DESHPANDE, J.

17.4.2007

ORAL JUDGMENT:

The petitioner is the Secretary of a Trust which administers a secondary school. The petitioner takes exception to a judgment and order passed by the Presiding Officer, School Tribunal, Bombay dated 9.3.1993 which in turn partly allows the appeal filed by respondent No.1 and grants back wages in lieu of reinstatement dehorse of section 11(2)(e) of the Maharashtra Employees of Private Schools and Prevention of Unfair Labour Practices Act, 1977 (the "Act"). Few facts that are relevant for adjudicating the issue involved in this petition are narrated herein below.

2. The respondent No.1 came to be appointed as Head Master in a school known as Shishu Sadan Prathamik and Madhyamik Shala with effect from 1.7.1980. The school in question is a minority school administered by

linguistic minority. The order of appointment appointing respondent No.1 as Head Master mentions that the appointment is for a period of two year but on temporary basis. The respondent No.1 came to be terminated from service by a notice of termination dated 16.3.1982 with effect the same date after paying one month salary in lieu of notice. Aggrieved by the termination respondent No.1 filed an appeal before the School Tribunal under section 9 of the Act. The respondent No.1 contended before the Tribunal that though the appointment order describes the appointment of the respondent No.1 as temporary appointment the appointment in fact was on probation for a period of two years. Further limb of the submission was that if the appointment of the respondent No.1 is construed to be one on probation then said appointment can only be terminated under section 5(3) of the Act on the ground that the work and/or behaviour of the employee was not satisfactory. Lastly it was submitted by respondent No.1 that as the notice of termination does not mention unsatisfactory work or behaviour as reason for termination, the termination must fall to the ground and hence respondent No.1 herein claimed reinstatement with full back wages. Per contra the petitioner/management submitted that the order of appointment itself describes the appointment to be temporary in nature for a period of two years and hence respondent No.1 is temporary employee. It is then submitted that assuming that the appointment was on probation still the termination was effected much before completion of period of two years and hence no fault can be found with the termination. There is one more angle to this dispute about legality and validity of termination of respondent No.1 and

the same is that after termination of respondent No.1 with effect from 16.3.1982 some other person came to be appointed as Head Master and long back assumed confirmation and permanency. It was also noticed by the Tribunal that after termination of respondent No.1 he had secured various appointments under different employers and was gainfully employed from the year 1984 onwards. It is further noticed by the Tribunal that respondent No.1 herein had worked for a period of more than three years under Adarsh Vidyalaya with effect from 5.10.1985 to 1.8.1988 and had challenged the said termination before the School Tribunal. The dispute was settled by respondent No.1 accepting sum of Rs.40,000/- towards full and final settlement of his claim. Taking over all view of the matter and being convinced that in the facts of the present case reinstatement was not to be granted, though the Tribunal has quashed and set aside the termination notice, it had proceeded to grant relief in the following terms:

> "For the reasons set out herein above instead of reinstatement under section 11(2)(e) the respondent-management is hereby directed to pay to the appellant six months salary (including pay and allowances, if any) and pay him back wages from the date of termination of his service till today, after deducting the emoluments if any, earned by the appellant during the period from the date of termination of his service by the respondent till today."

It is this order the legality, validity and propriety of which is questioned by filing the present writ petition.

3. Learned counsel for the petitioner states that as the Tribunal was

convinced that in the facts of the present case there was no reason to grant reinstatement and a recourse had been taken to section 11(2)(e) of the Act then it was wholly unjustified for the Tribunal to have proceeded to award further compensation by directing payment of back wages from the date of termination till the date of the order. Learned counsel for the petitioner has contended that once recourse is taken to section 11(2)(e) of the Act there is no scope for granting back wags as the statute lays down and prescribes the quantum of compensation to be awarded to an employee depending upon the number of years of service rendered by him. It is thus submitted that the later part of direction in relation to the payment of back wages from the date of termination till the date of judgment is without jurisdiction and the Tribunal which has limited jurisdiction could not have granted the said payment of back wages by placing reliance on the judgments of the Supreme Court in the cases of ***O.P.Bhandari*** V/s ***India Tourism Development Corporation,*** AIR 1987 SC 111 and ***Bharat Fritz Werner (P) Ltd. & Anr.*** V/s ***Workmen of Bharat Fritz Werner (P) Ltd.,*** 1990 (3) SCC 565. It will not be out of place to mention at this juncture that while issuing rule in the writ petition this Court has granted stay to the payment of back wages from the date of termination till the date of judgment subject to condition that the petitioner deposits an amount of compensation equivalent to six months salary as is payable under section 11(2)(e) of the Act and the respondent No.1 is also permitted to withdraw the same. The learned counsel for the respondent submits that the respondent No.1 was very meritorious candidate and was really instrumental in getting the school admitted to the grants and hence he

need be properly and adequately compensated. As the Tribunal has refused to grant reinstatement and as much water has flown after termination of respondent No.1 in the year 1982 the question as to whether the termination of respondent No.1's service is legal or otherwise looses its significance as the respondent No.1 thereafter had sought employment elsewhere under various employers and the petitioner on the other hand has appointed some other person as Head Master. The only question that remains to be answered is that if the School Tribunal finds that termination is illegal and further finds that in the facts of given case reinstatement is not to be granted then is it incumbent on the Tribunal to exercise powers under section 11(2)(e) of the Act or can the Tribunal in its discretion grant compensation contrary to criteria laid down under section 11(2)(e) of the Act as has been done in the present case.

4. I am in absolute agreement with the view taken by the School Tribunal that having regard to the facts of the present case respondent No.1 herein was not entitled for reinstatement and the 1st respondent needed to be compensated by payment of compensation in lieu of reinstatement. What should be the quantum is the question. The Tribunal under the provisions of the act has limited jurisdiction to deal with appeals against orders which are enumerated under section 9 of the Act. The Tribunal has limited jurisdiction and the exercise of the same is regulated by the provisions of the Act and the Rules made thereunder. If statutory provisions regulate a situation then it will be obvious that the Tribunal cannot travel beyond the same. Section 11 (2)(e) provides that where the Tribunal decides in any appeal that the order

of dismissal, removal or termination is in contravention of any law, the Tribunal may set aside the order of the management partially and/or wholly and direct the management to give to the employee 12 months' salary if he has been in service for 10 years or more and six months' salary if he has been in service for less than 10 years by way of compensation, regard being had to the loss of employment and possibility of getting or not getting suitable employment thereafter as it may specify. Thus the parameters for grant of compensation are laid down by section 11(2)(e) of the Act. Respondent No.1 has worked for less than two years with the petitioner. Respondent No.1 almost immediately after termination secured suitable alternate employment and had shifted from one employer to another. It does appear that having regard to the educational qualifications of respondent No.1 he could get alternative employment almost immediately. Lastly, when he was terminated by other Shikshak Mandal after having put in three years service he had entered into settlement by accepting Rs.40,000/-. The Tribunal had to work out the compensation within the parameters prescribe under section 11(2)(e) of the Act and after having due regard to loss of employment and possibility of getting or not getting suitable employment. As the record reveals that as respondent No.1 was in position to get suitable alternate employment and he did get appointments under three employers which has come on record, the Tribunal cannot be faulted for awarding compensation to the extent of six months' salary in lieu of reinstatement but the other part of the order which goes to grant back wages from the date of termination till the date of order of Tribunal, after deducting the amount of

salary received by respondent No.1 is wholly unsustainable in law. A person who has worked hardly for less than two years can not be awarded compensation of salary for a period of more than 10 years. I am of the clear view that the Tribunal has committed patent illegality in granting back wages to the respondent No.1 from the date of termination of his service till date of its judgment after deducting emoluments earned by respondent No.1 during the said period. I am further of the clear view that as the statute fixes the parameters within which compensation can be awarded, the Tribunal has no jurisdiction to grant compensation outside scope of section 11(2)(e) of the Act. In this view of the matter writ petition deserves to be partly allowed and I proceed to allow the same. Impugned order passed by the Tribunal to the extent it grants compensation to respondent No.1 in lieu of reinstatement by quantifying the same by payment of six months' salary (including pay and allowance) is upheld and the petition to that extend stands rejected. However the petition succeeds and the later part of the order passed by the Tribunal which reads as :

“..... and pay him the back wages from the date of termination of his services, till today, “ is quashed and set aside. Rule is made absolute in above terms with no order as to costs.

5. At this stage learned counsel for the respondent No.1 points out that meager amount of Rs.6000/- was deposited in this Court in purported compliance of the order directing the petitioner to deposit six months' salary. He submits that it be clarified that respondent No.1 is entitled to be paid six months' salary in the scale prescribed and then payable in the year 1982 to

the Head Master. In all fairness the learned counsel for the petitioner submits that respondent No.1 will be paid the amount of difference of salary in scale prescribed and one deposited in the Court and payment will be made within a period of four weeks from today. Hence no order in this regard is necessary to be passed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2696 OF 2005
IN
WRIT PETITION NO. 1493 OF 1993.

Smt.Sukanyaben G. Vakil ....
Petitioner
V/s
Rasiklal T. Dalal & Ors..... .....
Respondent.

Mr.V.M.Parkar for B.R.Zaveri, Adv. for the petitioner.

Mr.J.M.Chodankar, Adv. For respondent No.1.
Mr.A.P.Vanarse, AGP for respondent No.3.

Office Notes, Office Memoranda of Coram, appearances Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr.V.M.Parkar for B.R.Zaveri, Adv. for the petitioner.

Mr.J.M.Chodankar, Adv. For respondent No.1.
Mr.A.P.Vanarse, AGP for respondent No.3.

Mr., Adv. for the petitioner.

CORAM: A.P. DESHPANDE, J.

17.4.2007

PC:

Learned counsel for the respondent No.1 points out a typographical error in the name of respondent No.1 who is applicant in present civil application. It is pointed out that the name of the applicant should read as “Dr.Rasiklal T. Dalal & Ors.” Whereas the same is wrongly typed as Dr.Rasiklal D. Dalal & Ors. This is obviously a typographical error. Same stands corrected accordingly.